

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LINDA ECKERT BALLARD,

Plaintiff,

vs.

CIVIL NO. 10-886 JH/LFG

THE GEO GROUP, INC., MIKE
MARTIN, NFN GRAYSON, and
DEBORA VEGA-COWAN,

Defendants.

ORDER DISREGARDING PLAINTIFF'S RESPONSE [DOC. 169]

THIS MATTER is before the Court on *pro se* Plaintiff Linda Eckert Ballard's ("Ballard") "Motion to Strike As Response in Opposition to Defendants' Amended Joint Motion for Summary Judgment" [Doc. 169].

Ballard's intent in this pleading is somewhat unclear. While Ballard identified the filing as a "motion to strike," she does not seek to strike any specific matter from a pleading under Fed. R. Civ. P. 12(f). Her 37-page "motion" [Doc. 169] and the accompanying 122 pages of exhibits are more likely an attempt to submit an untimely response to Defendants' Amended Joint Motion for Summary Judgment, filed January 24, 2013 [Doc. 156.] Indeed, in Ballard's "motion," she refers to Defendants' amended summary judgment motion and to Fed. R. Civ. P. 56 (discussing requirements for summary judgment pleadings). She also sets out a "statement of undisputed facts" and the "summary judgment standard." [Doc. 169, at 7-16.] Accordingly, the Court construes Ballard's "motion to strike" to actually be an attempted response to the amended summary judgment motion. See Roman-Nose v. N.M. Dep't of Human Servs., 967 F.2d 435, 437 (10th Cir. 1992)

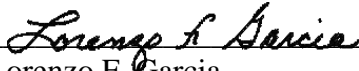
(court is not bound by a *pro se* litigant's characterization of available relief). *See also Williams v. Gonzales*, 567 F. Supp. 2d 148, 149 (D.D.C. 2008) (court must determine the proper characterization of a filing by the nature of the relief sought) (internal citations omitted).

The Court observes that Ballard's response to Defendants amended summary judgment motion was due no later than February 11, 2013. She failed to file a response or a request for extension before the expiration of that deadline. On March 25, 2013, Defendants filed a Notice of Completion of Briefing, notifying the Court that the motion was ready for resolution and that Ballard did not file a timely response. [Doc. 168].

On February 19, 2013, Ballard sought to extend the time within which to file a response. [Doc. 166]. Regrettably for Ballard, she filed her motion for extension of time after expiration of the original time within which to act, and the Court denied her request for enlargement of time to file a response to the amended summary judgment motion. [Doc. 198.]

IT IS THEREFORE ORDERED that the Court construes Ballard's "Motion to Strike" as an improperly filed response to Defendants' amended summary judgment motion. Ballard filed the response [Doc. 169] without leave of Court, and it is untimely. Accordingly, the Court disregards the response [Doc. 169] and denies any request to strike, to the extent Ballard sought to strike a filing.

IT IS SO ORDERED.


Lorenzo F. Garcia
United States Magistrate Judge